Nurul Rifayah bt Muhammad Iqbal & Ors v Tan Sri Dato' Hj Mahiaddin bin Md Yassin (in his capacity as the Prime Minister of Malaysia) & Ors

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–108–04 OF 2021
AHMAD KAMAL J
21 JUNE 2021

Administrative Law — Judicial review — Application for leave to commence judicial review proceedings — Whether impugned decisions were amenable to judicial review — Whether applicants adversely affected by impugned decisions — Whether applicants' case frivolous or vexatious — Federal Constitution art 119 — Rules of Court 2012 O 53 r 2(4)

This was an application for leave to commence judicial review proceedings concerning the failure or refusal of the respondents to bring into force the constitutional amendment which lowered the voting age from 21 to 18 years old and to enable automatic voter registration ('AVR') by July 2021. The applicants were Malaysian citizens between the ages of 18–20 years old. They were also part of UNDI 18, a Malaysian youth movement which successfully advocated for the constitutional amendment to lower the voting age in Malaysia from 21 to 18 years old. According to the applicants, the first respondent as the Prime Minister, was in a position to advise the Yang di-Pertuan Agong pursuant to art 40 of the Federal Constitution ('the FC') to *gazette* the date in which the lowering of the voting age from 21 to 18 years old would come into effect. The third respondent was responsible for the conduct of elections to the House of Representatives and the State Legislative Assembly, as well as to prepare and review the electoral roll for such elections. On 16 July 2019, the House of Representative unanimously passed the Constitution (Amendment) Act 2019 ('the Act'). The Senate also unanimously passed the Act on 25 July 2019. On 4 September 2019, the Act was given the Royal Assent by the Yang di-Pertuan Agong and published in the *gazette* on 10 September 2019. On 25 March 2021, the third respondent in a press statement mentioned that AVR and the lowering of voting age from 21 to 18 years old would only be implemented after 1 September 2022. This was purportedly due to challenges faced by the third respondent pursuant to the Movement Control Order. On 27 March 2021, the first respondent stated that the chairperson of the third respondent had explained to him that the lowering of the voting age from 21 to 18 years old was expected to be implemented after 1 September 2022, and that he was satisfied with such an explanation. Therefore, according to the applicants, the first and the second respondent had accepted and

affirmed the third respondent's decision to delay the implementation of the lowering of the voting age from 21 to 18 years old from July 2021 to after 1 September 2022. The abovementioned decisions by the respondents formed the crux of the application for judicial review. The Attorney General's Chambers ('AGC') raised a preliminary objection that the application for leave must be dismissed as there was no arguable case and the application was nothing but frivolous and vexatious. It was also submitted that this was a hopeless case which did not merit further investigation on a full inter partes basis. The applicants failed to satisfy the threshold requirement for an order of mandamus against the respondents. It was also the AGC's submission that leave ought not to be granted for the simple reason that it was still premature at this stage. The necessary amendments to the laws and regulations relating to elections and other Acts needed to be made in order to enforce the said constitutional amendments. Hence, these issues arose for determination: (a) whether the third respondent's decision to delay the implementation of the lowering of the voting age from 21 to 18 years old from July 2021 to after 1 September 2022 was an impugned decision that were amendable for judicial review; (b) whether the applicants were adversely affected by the respondents' impugned decisions; and (c) whether the applicants' case was not frivolous nor vexatious.

Held, allowing the application with no order as to costs:

(1) All three respondents were categorised as public authorities. Therefore, it was the view of the learned judge that the decision of the first respondent on behalf of the second respondent on 27 March 2021 in accepting and affirming the third respondent's decision on 25 March 2021 to postpone the implementation of the lowering of the voting age from 21 to 18 years old from July 2021 to after 1 September 2022 was a legal decision that would bind related parties. Hence, the court was of the view that it fell under impugned decisions that were amenable for judicial review (see paras 37–38).

(2) The applicants were citizens of Malaysia aged between 18–20 years old. In the event s 3(a) of the Act was brought into force, the applicants would have the rights and qualifications to be registered in the electoral roll as an elector in the constituency which they reside on the qualifying date and they were entitled to vote in that constituency in any election to the House of Representative or the Legislative Assembly. The applicants were also part of the UNDI 18 movement, which was a Malaysian youth movement that had successfully advocated for the amendment of art 119(1) of the FC to reduce the minimum voting age in Malaysia from 21 to 18 years old. On that account, the respondents' decision in not bringing into operation s 3(a) of the Act immediately and/or before July 2021 had adversely affected the applicants (see paras 40–42).

(3) The constitutional amendments for lowering the voting age from 21 to 18 years old had been passed in Parliament and had received the royal assent. The only outstanding issue was the timing in which the same came into effect. Thus, the court agreed with the applicants' argument that the amendments to the relevant acts and regulations was a secondary issue which should not stand in the way for the constitutional amendment to come into effect. Hence, the applicants' case was not frivolous nor vexatious. The court should allow the matter to proceed to the substantive stage, and allow the respondents to provide an explanation by affidavit and thereafter only decide on whether a case has been made and what reliefs were appropriate. The applicants had passed the leave threshold (see paras 48–49 & 51–52).

[Bahasa Malaysia summary

Ini adalah permohonan kebenaran untuk semakan kehakiman terhadap kegagalan atau keengganan responden untuk melaksanakan pindaan perlembagaan yang menurunkan umur mengundi daripada 21 kepada 18 tahun dan membolehkan pendaftaran pengundi automatik ('AVR') menjelang Julai 2021. Pemohon adalah warganegara Malaysia berumur di antara 18–20 tahun. Mereka juga adalah sebahagian daripada UNDI 18, gerakan belia Malaysia yang berjaya menyokong pindaan perlembagaan untuk menurunkan umur mengundi di Malaysia daripada 21 kepada 18 tahun. Menurut pemohon, responden pertama sebagai Perdana Menteri, berada di dalam kedudukan untuk menasihati Yang di-Pertuan Agong menurut perkara 40 Perlembagaan Persekutuan ('PP') untuk *mewartakan* tarikh menurunkan umur mengundi daripada 21 kepada 18 tahun. Responden ketiga bertanggungjawab menjalankan pilihan raya di Dewan Rakyat dan Dewan Undangan Negeri, serta menyediakan dan mengkaji semula daftar pemilih untuk pilihan raya tersebut. Pada 16 Julai 2019, Dewan Rakyat sebulat suara meluluskan Akta Perlembagaan (Pindaan) 2019 ('Akta tersebut'). Dewan Negara juga sebulat suara meluluskan Akta tersebut pada 25 Julai 2019. Pada 4 September 2019, Akta tersebut telah diperkenankan oleh Yang Di-Pertuan Agong dan disiarkan dalam *warta* pada 10 September 2019. Pada 25 Mac 2021, responden ketiga dalam satu kenyataan media menyebut bahawa AVR dan penurunan umur mengundi daripada 21 kepada 18 tahun hanya akan dilaksanakan selepas 1 September 2022. Hal ini kononnya disebabkan oleh cabaran yang dihadapi oleh responden ketiga selaras dengan Perintah Kawalan Pergerakan. Pada 27 Mac 2021, responden pertama menyatakan bahawa pengerusi responden ketiga telah menjelaskan kepadanya bahawa penurunan umur mengundi daripada 21 kepada 18 tahun dijangka akan dilaksanakan selepas 1 September 2022 dan beliau berpuas hati dengan penjelasan tersebut. Oleh itu, menurut pemohon, responden pertama dan kedua telah menerima dan mengesahkan keputusan responden ketiga untuk menangguhkan pelaksanaan penurunan umur mengundi daripada 21 kepada 18 tahun dari Julai 2021 kepada selepas 1 September 2022. Keputusan yang dinyatakan oleh

A responden telah membentuk asas permohonan untuk semakan kehakiman. Jabatan Peguam Negara ('AGC') menyuarakan bantahan awal bahawa permohonan kebenaran tersebut harus ditolak kerana tiada kes yang boleh dipertikaikan dan permohonan tersebut adalah tidak berasas dan meremehkan. Adalah dihujahkan juga bahawa tiada merit untuk peringkat B inter partes. Pemohon gagal memenuhi prasyarat bagi perintah mandamus terhadap responden. AGC juga menghujahkan bahawa tindakan pemohon adalah pramatang pada peringkat ini. Pindaan yang perlu kepada undang-undang dan peraturan-peraturan yang berkaitan dengan pilihan raya dan Akta-akta lain perlu dibuat untuk menguatkuasakan pindaan C perlembagaan tersebut. Oleh itu, isu-isu ini timbul untuk keputusan mahkamah ini: (a) sama ada keputusan responden ketiga untuk menangguhkan pelaksanaan penurunan umur mengundi daripada 21 kepada 18 tahun dari Julai 2021 kepada selepas 1 September 2022 adalah keputusan yang tidak munasabah yang boleh menjadi asas untuk semakan kehakiman; D (b) sama ada pemohon-pemohon telah terjejas teruk oleh keputusan responden-responden; dan (c) sama ada permohonan ini adalah meremehkan dan menyusahkan.

E **Diputuskan**, membenarkan permohonan dengan tanpa perintah untuk kos:

(1) Ketiga-tiga responden dikategorikan sebagai pihak berkuasa awam. Oleh itu, hakim bijaksana berpendapat bahawa keputusan responden pertama bagi pihak responden kedua pada 27 Mac 2021 dalam menerima dan mengesahkan keputusan responden ketiga pada 25 Mac 2021 untuk F menangguhkan pelaksanaan penurunan umur mengundi daripada 21 kepada 18 tahun dari Julai 2021 kepada selepas 1 September 2022 adalah keputusan undang-undang yang mengikat pihak-pihak berkaitan. Oleh itu, mahkamah berpendapat bahawa keputusan ini boleh disemak melalui semakan kehakiman (lihat perenggan 37–38).

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(2) Pemohon adalah warganegara Malaysia berumur di antara 18–20 tahun. Sekiranya s 3(a) Akta tersebut berkuatkuasa, pemohon-pemohon mempunyai hak dan kelayakan untuk didaftarkan dalam daftar pemilih sebagai pemilih di kawasan pilihan raya yang mereka tinggal pada tarikh H kelayakan dan mereka berhak mengundi di kawasan tersebut di dalam mana-mana pilihan raya dewan perwakilan atau Dewan Undangan Negeri. Pemohon juga merupakan sebahagian daripada gerakan PRU 18, yang merupakan pergerakan belia Malaysia yang telah berjaya menyokong pindaan perkara 119(1) PP untuk menurunkan umur I minimum mengundi di Malaysia daripada 21 kepada 18 tahun. Atas sebab itu, keputusan responden untuk tidak melaksanakan s 3(a) Akta dengan serta-merta dan/atau sebelum Julai 2021 telah menjejaskan pemohon (lihat perenggan 40–42).

(3) Pindaan perlembagaan untuk menurunkan had umur mengundi

daripada 21 kepada 18 tahun telah diluluskan di Parlimen dan telah mendapat perkenan diraja. Satu-satunya isu yang adalah masa pindaan tersebut berkuat kuasa. Oleh itu, mahkamah bersetuju dengan hujah pemohon bahawa pindaan kepada akta dan peraturan yang berkaitan adalah isu sampingan yang tidak sepatutnya menghalang pindaan perlembagaan berkuat kuasa. Oleh itu, kes pemohon tidak remeh dan menyusahkan. Mahkamah sepatutnya membenarkan perkara tersebut diteruskan ke peringkat substantif, dan membenarkan responden memberikan penjelasan melalui afidavit dan selepas itu hanya memutuskan sama ada pemohon mempunyai hak untuk menyemak keputusan tersebut dan memberikan relif yang sesuai. Pemohon telah berjaya memenuhi syarat permohonan kebenaran semakan kehakiman (lihat perenggan 48–49 & 51–52).]

Cases referred to

Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145; [2014] 2 MLRA 1, FC (refd)

Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim [2011] 6 MLJ 490; [2012] 1 CLJ 805; [2012] 2 MLRA 197, FC (refd)

Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 5 MLJ 60; [2006] 1 MLRH 507; [2006] 1 CLJ 927, CA (refd)

WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd [2012] 4 MLJ 296; [2012] 4 CLJ 478; [2012] 4 MLRA 257, FC (folld)

Legislation referred to

Election Offence Act 1954
Elections (Conduct of Elections) Regulations 1981
Elections (Registration of Electors) Regulations 2002
Federal Constitution arts 4(1), 8, 40, 119(1), (1)(a)
Interpretation Acts 1948 and 1967 s 54(2)
Rules of Court 2012 O 53, O 53 rr 2(4), 3(2)

Gurdial Singh Nijar (Ambiga Sreenevasan, Lim Wei Jiet, Abraham Au, Joshua Wu, New Sin Yew and Beatrice Chin with him) (Amerbon) for the applicants.
Shamsul bin Bolhassan (Azizan bin Md Arshad and YM Raja Shahril Anuar bin Raja Baniamin with him) (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Ahmad Kamal J:

INTRODUCTION

[1] The applicants on 2 April 2021 filed an application for leave to commence judicial review proceedings pursuant to O 53 of the Rules of Court 2012 ('the ROC 2012').

[2] The applicants' case essentially concerns the failure or refusal of the Respondents to bring into force the constitutional amendment which lowered the voting age from 21 to 18 years old and to enable automatic voter registration ('AVR') by July 2021.

[3] The applicants seek, inter alia, the following reliefs:

1. Bahawa kebenaran menurut Aturan 53 Kaedah 3(1) Kaedah-Kaedah Mahkamah 2012 diberi kepada Pemohon-Pemohon untuk:

1.1 Suatu deklarasi bahawa keputusan Responden Pertama dan/atau Responden Ke-2 untuk menyamakan dan mengikat penguatkuasaan Seksyen 3(a) Akta Perlembagaan (Pindaan) 2019 (Akta tersebut) dengan perlaksanaan Automatic Voter Registration (AVR) adalah tidak munasabah;

1.2 Suatu deklarasi bahawa keputusan Responden Pertama dan/atau Responden Ke-2 untuk menyamakan dan mengikat penguatkuasaan Seksyen 3(a) Akta tersebut dengan penguatkuasaan Seksyen 3(b) Akta tersebut adalah tidak munasabah;

1.3 Suatu deklarasi bahawa keputusan Responden Pertama dan/atau Responden Ke-2 untuk menyamakan dan mengikat penguatkuasaan Seksyen 3(a) Akta tersebut dengan perlaksanaan AVR adalah salah di sisi undang-undang;

1.4 Suatu deklarasi bahawa keputusan Responden Pertama dan/atau Responden Ke-2 untuk menyamakan dan mengikat penguatkuasaan Seksyen 3(a) Akta tersebut dengan penguatkuasaan Seksyen 3(b) Akta tersebut adalah salah di sisi undang-undang;

1.5 Suatu deklarasi bahawa keputusan Responden Pertama dan/atau Responden Ke-2 untuk menyamakan dan mengikat penguatkuasaan Seksyen 3(a) Akta tersebut dengan perlaksanaan AVR adalah tidak bersekadaran;

1.6 Suatu deklarasi bahawa keputusan Responden Pertama dan/atau Responden Ke-2 untuk menyamakan dan mengikat penguatkuasaan Seksyen 3(a) Akta tersebut dengan penguatkuasaan Seksyen 3(b) Akta tersebut adalah tidak bersekadaran;

1.7 Suatu deklarasi bahawa keputusan Responden Pertama dan/atau Responden Ke-2 telah gagal menguatkuasakan Seksyen 3(a) Akta tersebut dalam tempoh masa yang munasabah;

1.8 Suatu deklarasi bahawa Pemohon-Pemohon mempunyai jangkaan sah

(*legitimate expectation*) bahawa Seksyen 3(a) Akta tersebut akan dikuatkuasakan pada atau sebelum Julai 2021; A

1.9 Suatu deklarasi bahawa Responden Pertama dan/atau Responden Ke-2 mempunyai tanggungjawab untuk menguatkuasakan Seksyen 3(a) Akta tersebut dalam tempoh masa yang munasabah dan dalam apa jua keadaan pun (*in any event*) pada atau sebelum Julai 2021; B

1.10 Suatu deklarasi bahawa keputusan Responden Pertama dan/atau Responden Ke-2 untuk melewatkan penguatkuasaan Seksyen 3(a) Akta tersebut adalah suatu bentuk penindasan pengundi (*voter suppression*) yang berumur 18 hingga 20 tahun pada Julai 2021; C

1.11 Suatu perintah Certiorari untuk membatalkan seluruh keputusan Responden Pertama dan/atau Responden Ke-2 untuk tidak menguatkuasaan Seksyen 3(a) Akta tersebut dengan segera dan/atau pada sebelum Julai 2021;

1.12 Suatu perintah Mandamus kepada Responden Pertama dan/atau Responden Ke-2 untuk menyebabkan penguatkuasaan Seksyen 3(a) Akta tersebut dalam tempoh masa yang munasabah dan dalam apa jua keadaan pun (*in any event*) pada atau sebelum Julai 2021; D

1.13 Secara alternatifnya, suatu perintah Certiorari untuk membatalkan seluruh keputusan Responden Pertama dan/atau Responden Ke-2 untuk tidak menguatkuasakan keseluruhan Seksyen 3 Akta tersebut dengan segera dan/atau pada atau sebelum Julai 2021; E

1.14 Secara alternatifnya, suatu perintah Mandamus kepada Responden Pertama dan/atau Responden Ke-2 untuk menyebabkan penguatkuasaan keseluruhan Seksyen 3 Akta tersebut dalam apa jua keadaan pun (*in any event*) pada atau sebelum Julai 2021; F

2. Kebebasan untuk memohon (*liberty to apply*);

3. Sebarang arahan, perintah atau writ lain bagi penguatkuasaan hak-hak yang diberikan oleh Bahagian II Perlembagaan Persekutuan, atau mana-mana daripada mereka, atau untuk memberikan keadilan yang sepenuhnya di dalam perkara dalam tindakan ini; G

4. Tiada perintah mengenai kos; dan

5. Perintah dan/atau arahan selanjutya yang dianggap sesuai dan adil oleh Mahkamah Yang Mulia ini. H

[4] After detailed considerations of the applicants' application for leave for judicial review (encl 1), the statement filed pursuant to O 53 r 3(2) of the ROC 2012, the affidavit in support and written submissions as well as oral submissions by both parties, I allowed the applicants' application in encl 1. This judgment contains the full reasons for my decision. I

A BACKGROUND FACTS

[5] The applicants are Malaysian citizens between the ages of 18–20 years old. They are also part of UNDI 18, a Malaysian youth movement which successfully advocated for the constitutional amendment to lower the voting
B age in Malaysia from 21 to 18 years old.

[6] The first respondent is the Prime Minister of Malaysia. According to the applicants, the first respondent as the Prime Minister, is in a position to advise
C the Yang di-Pertuan Agong pursuant to art 40 of the Federal Constitution ('the FC') to *gazette* the date in which the lowering of the voting age from 21 to 18 years old would come into effect.

[7] The second respondent is the Government of Malaysia.

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[8] The third respondent is the Election Commission of Malaysia. According to the applicants, the third respondent is responsible for the conduct of elections to the House of Representatives and State Legislative Assembly, as well as to prepare and review the electoral roll for such elections.

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[9] On 16 July 2019, the House of Representative unanimously passed the Constitution (Amendment) Act 2019 ('the Act').

[10] On 25 July 2019, the Senate also unanimously passed the Act.
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[11] On 4 September 2019, the Act was given the Royal Assent by the Yang di-Pertuan Agong.

G **[12]** On 10 September 2019, the Act was published in the *gazette*.

[13] The Act provides that the lowering of the voting age from 21 to 18 years old (s 3(a) of the Act) and AVR (s 3(b) of the Act) shall come into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the
H *gazette*.

[14] According to the applicants, it is trite that the Yang di-Pertuan Agong shall act based on the advice of the first respondent thus the decision to bring into effect the lowering of the voting age from 21 to 18 years old is in effect the
I decision of the first respondent.

[15] Since the Act was passed, there were several representations that have been made by the respondents from 2019–2021 (refer to paras 18–31 of the applicants' affidavit in support) (encl 2).

[16] On 25 March 2021, the third respondent in a press statement mentioned that AVR and the lowering of voting age from 21 to 18 years old will only be implemented after 1 September 2022. This is purportedly because of challenges faced by the third respondent pursuant to the Movement Control Order.

[17] On 27 March 2021, the first respondent stated that the chairperson of the third respondent had explained to him the lowering of the voting age from 21 to 18 years old is expected to be implemented after 1 September 2022, and that he was satisfied with such an explanation.

[18] Therefore, according to the applicants, the first and the second respondent has accepted and affirmed the third respondent's decision to delay the implementation of the lowering of the voting age from 21 to 18 years old from July 2021 to after 1 September 2022.

[19] The abovementioned decisions by the respondents form the crux of this application for judicial review.

[20] The Attorney General's Chambers ('AGC') raised a preliminary objection. It was submitted that this application for leave must be dismissed forthwith as there is no arguable case and this application is nothing but frivolous and vexatious. It was also submitted that this is a hopeless case which does not merit further investigation on a full inter partes basis. The applicants failed to satisfy the threshold requirement for an order of mandamus against the respondents.

[21] It was also the AGC's submission that leave ought not to be granted for the simple reason that it is still premature at this stage. The necessary amendments to the laws and regulations relating to elections and other Acts need to be made in order to enforce the said Constitutional amendments.

THE LAW

[22] The Federal Court in *WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd* [2012] 4 MLJ 296 at p 303; [2012] 4 CLJ 478; [2012] 4 MLRA 257 speaking through Suriyadi Halim Omar FCJ (as he then was) held:

> ... Leave may be granted if the leave application is not thought of as frivolous, and if leave is granted, an arguable case in favour of granting the reliefs sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though, ie, unless the matter for judicial review is amenable to judicial review no success may be envisaged.

[23] Based on the judgment laid down in *WRP Asia Pacific Sdn Bhd*, the test to be applied are as follows:

(a) whether the subject matter is amenable to judicial review; and if so

(b) from the materials available, whether the application is frivolous and if not thought as frivolous, to consider that the applicant has an arguable case to obtain the relief sought at the substantive hearing.

[24] The same principles governing applications for leave to commence judicial review proceedings have also been set out in *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60; [2006] 1 MLRH 507; [2006] 1 CLJ 927 where Gopal Sri Ram JCA (as he then was) held:

> ... the High Court should not go into the merits of the case at leave stage. Its role is only to see if the application for leave is frivolous ... So too will the court be entitled to refuse leave if it is a case where the subject matter of the review is one which by settled law (either written law or the common law) is non-justiciable.

DECISION OF THE COURT

[25] Having perused the cause papers, I am of the view that the issues to be determined are as follows:

(a) whether the third respondent's decision to delay the implementation of the lowering of the voting age from 21 to 18 years old from July 2021 to after 1 September 2022 which has been accepted and affirmed by the first and the second respondent is an impugned decision that are amendable for judicial review?

(b) whether the applicants are adversely affected by the respondents' impugned decisions? and

(c) whether the applicants' case is not frivolous nor vexatious?

First and second issue

Whether the third respondent's decision to delay the implementation of the lowering of the voting age from 21 to 18 years old from July 2021 to after 1 September 2022 which has been accepted and affirmed by the first and the second respondent's is an impugned decision that are amendable for judicial review

Whether the applicants are adversely affected by the respondents' impugned decision

[26] I will deal with the two above issues together.

[27] Order 53 r 2(4) of the ROC 2012 expressly allows persons who are 'adversely affected' by the decision made by a public authority to initiate judicial review applications. For ease of reference, sub-r (4) is reproduced as follows:

> (4) Any person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function shall be entitled to make the application.

[28] The requirements of O 53 of the ROC 2012 are mandatory and must be complied with, failing which the application would not be entertained by the court.

[29] The Federal Court speaking through Raus Sharif FCJ (as he then was) in *Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim* [2011] 6 MLJ 490; [2012] 1 CLJ 805; [2012] 2 MLRA 197 had outlined the applicable principles with regards to the decision, action or omission that must have adversely affected a person as enunciated through O 53 r 2(4) of the ROC 2012 as follows:

(a) to fall within the ambit of O 53 r 2(4), a decision 'must affect the aggrieved party by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy' (para 26);

(b) the decision must have the effect of directly affecting the applicant's legal rights (paras 28–29). It must be a 'legal and binding decision' (para 38);

(c) a mere finding or recommendation, which is not binding on anybody and has no legal effect on the right of a subject, is not amenable to judicial review (paras 27 and 39); and

(d) where the impugned acts are not decisions that affect the rights of the applicants, the application should be dismissed at leave stage. It is not necessary to grant leave to determine the issue at the substantive hearing (para 40).

[30] The impugned decisions in this application refer to the third respondent's decision to delay the implementation of the lowering of the voting age from 21 to 18 years old from July 2021 to after 1 September 2022 which has been accepted and affirmed by the first and the second respondent as mentioned by the applicants in their affidavit in support in encl 2.

[31] The third respondent's decision was made through a media statement on 25 March 2021 (refer to exh A13). On 27 March 2021, the first respondent has accepted and affirmed the third respondent's decision (refer to exh A14).

[32] According to the applicants, based on the above, the first respondent has decided to delay the enforcement of s 3(a) of the Act to September 2022.

[33] It has been stated in the affidavit of support that the said respondents' impugned decisions have adversely affected all the applicants.

[34] The applicants cannot register themselves in the electoral roll as voters in the constituencies in which they reside in and as a result, the applicants are unable to vote in any elections which are held after July 2021. This includes the possibility of not being able to vote in the 15th General Elections.

[35] It is to be highlighted that only legal decision can be entitled for judicial review. This has been decided in *Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim* as follows:

> [27] We adopt the same view. Under the scheme of O 53 of the RHC, only a person adversely affected by the decision of a public authority shall be entitled to make the application for judicial review. In the present case, there is no dispute that the Commission is a public authority. But we are of the view that the Commission is not a decision making body. A closer look at the Commission's report will reveal that the Commission does not make legal decision. The report consists of findings and recommendations of the Commission on the five terms of reference entrusted upon them to do. Being mere findings and recommendations, it do not bind the respondents, not even the government.

[36] Applying the above said case to the one before this court, the question that has to be addressed is whether the impugned decisions fall within the ambit of O 53 r 2(4) of the ROC 2012 for judicial review?

[37] All three respondents are in no doubt categorised as public authorities. Therefore, it is my opinion that the decision of the first respondent on behalf of the second respondent on 27 March 2021 in accepting and affirming the third respondent's decision on 25 March 2021 to postpone the implementation of the lowering of the voting age from 21 to 18 years old from July 2021 to after 1 September 2022 is a legal decision that will bind related parties.

[38] Hence, it is my view that it falls under impugned decisions that are amendable for judicial review.

[39] In furtherance to that, O 53 r 2(4) of the ROC 2012 states that any person who is adversely affected by the decision of any public authority shall be entitled to make the application (see *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145; [2014] 2 MLRA 1).

[40] In this instant application, the applicants are citizens of Malaysia aged between 18–20 years old. In the event s 3(a) of the Act is brought into force, the applicants would have the rights and qualifications to be registered in the electoral roll as an elector in the constituency which they reside on the qualifying date and they are entitled to vote in that constituency in any election to the House of Representative or the Legislative Assembly.

[41] The applicants are also part of the UNDI 18 movement, which is a Malaysian youth movement that had successfully advocated for the amendment of art 119(1) of the FC to reduce the minimum voting age in Malaysia from 21 to 18 years old.

[42] On that account, I am in the agreement with the applicants' submission that the respondents' decision in not bringing into operation s 3(a) of the Act immediately and/or before July 2021 have adversely affected the applicants.

Third issue

Whether the applicants' case is not frivolous nor vexatious?

[43] The applicants submitted that their case is not frivolous or vexatious and satisfy the very low threshold for leave to proceed with judicial review. The applicants' case is predicted on the following established principles of constitutional and/or administrative law:

(a) the applicants have a legitimate expectation to register themselves as voters by the end of July 2021 and to thereafter exercise their right to vote. The respondents' impugned decisions to not bring into operation s 3(a) of the Act by July 2021 but purportedly only after September 2022 amounts to a breach of the applicants' legitimate expectation;

(b) s 54(2) of the Interpretation Acts 1948 and 1967 states that 'Where no time prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises';

(c) the respondents' decision to not bring into force s 3(a) of the Act immediately but purportedly only after September 2022, is a breach of their duty to bring into operation s 3(a) of the Act within a reasonable period of time;

(d) the respondents' decision is unconstitutional as they have denied the constitutional rights of the applicants to vote after July 2021;

(e) the respondents' decision has caused the amendment to art 119(1)(a) of the FC to be ineffective and illusory;

(f) the respondents' decision has the effect of disregarding the manifest intention of the Parliament and/or Legislature and is in contravention of the principle/doctrine of separation of powers;

(g) the respondents' decision amount to a suppression of the voting rights of Malaysians between the ages of 18–20 years old;

(h) the respondents' impugned decisions are unreasonable and irrational as 18–20 years old are qualified to contest in elections to be a Member of Parliament and/or State Legislative Assembly Representative but are not allowed to vote for their respective Members of Parliament and/or State Legislative Assembly;

(i) the respondents should not have tied the bringing into operation of s 3(a) of the Act with the implementation of AVR in s 3(b) of the Act. The lowering of voting age of electors from 21 to 18 years old and AVR are two distinct matters. The former could be brought into operation before the latter. In the circumstances, the respondents have taken into irrelevant considerations and have failed to take into account relevant considerations;

(j) further and alternatively, the respondents' decision of not bringing into force s 3(a) of the Act by July 2021 and purportedly only after September 2022 is disproportionate and arbitrary in nature, contrary to art 8 of the FC;

(k) further and alternatively, the first respondent and/or the second respondent have unlawfully delegated to the third respondent their powers to decide on the date which s 3(a) of the Act comes into operation; and

(l) further and alternatively, the first respondent and/or the second respondent have erred in law by accepting the erroneous recommendation of the third respondent to delay the bringing into force of s 3(a) of the Act.

[44] The AGC maintains that the enforcement and implementation of the Constitutional amendments can only be done with the necessary amendments to the corresponding statutory provisions.

[45] Now, the enduring issue to be determined is whether the applicants' case is not frivolous nor vexatious?

[46] Based on the Hansard of the Dewan Rakyat, the then Prime Minister on 16 July 2019 in debating the Constitutional amendment had made it clear that all the necessary laws and regulations need to be amended in order to enforce s 3(a) and 3(b) of the Act.

[47] The related necessary laws and regulations are as follows:

(a) Elections (Registration of Electors) Regulations 2002 (PU (A) 293/2002);

(b) Election Offence Act 1954; and

(c) Elections (Conduct of Elections) Regulations 1981.

[48] The Constitutional amendments for lowering the voting age from 21 to 18 years old have been passed in Parliament and have received the royal assent. The only outstanding issue is the timing in which the same comes into effect.

[49] Based on the above, I am in agreement with the applicants' argument that the amendments to the relevant acts and regulations is a secondary issue which should not stand in the way for the constitutional amendment to come into effect.

[50] The legal position for the supremacy of the Constitution is clear as enshrined in art 4(1) of the FC provides as follows:

> 4 Supreme law of the Federation
>
> (1) This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

[51] Hence, it is my view that the applicants' case is not frivolous nor vexatious. This court should allow the matter to proceed to the substantive stage, and allow the respondents to provide an explanation by affidavit and thereafter only decide on whether a case has been made and what reliefs are appropriate.

CONCLUSION

[52] Having considered the application, it is my opinion that the applicants have passed the leave threshold.

[53] Accordingly, this application for leave to commence judicial review proceedings is hereby allowed with no order as to costs.

Application allowed with no order as to costs.

Reported by Muhamad Azham Marwan